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May 6, 2022

VIA PACER ONLY

Honorable Ronnie Abrams, USDJ
Thurgood Marshall United States Courthouse, Courtroom 1506
40 Foley Square
New York, NY 10007
Deputy Phone: (212) 805-0162
Chambers Phone: (212) 805-0284

Re: LETTER MOTION Re: Adjournment of Additional Briefing
JMG Improvements, Inc. et al v. Arch Specialty Insurance Company;
Armour Risk Management, Inc.
Case No. 20-CV-2882 (RA)

Honorable Judge Ronnie Abrams:

Undersigned is counsel for the plaintiff, JMG Improvements, Inc. (“JMG” or “Plaintiff”). I am writing to request leave to late-file the response brief with respect to the captioned matter. Due completely to my own mental lapse, I have been laboring under the impression that the deadline was May 6, today. Mr. Valverde, counsel for Arch, has already filed his response on May 3, as ordered, and I simply assumed he had filed early. I feel this response is necessary and will assist the Court for several reasons. First, counsel for Arch has made extensive reference to *Peleus v. Atlantic*. We intend to argue that that case was wrongly decided, but will show that it was not appealed since in that case Peleus actually paid the defense costs, and Atlantic did not need any indemnity costs paid because Atlantic had won summary judgment dismissing the underlying case against it. For this reason *Peleus v Atlantic* is not persuasive. (See exhibits 1 and 2 hereto.) *Peleus v Atlantic* was wrongly decided because it ignored well-established New York law that reservations of rights are ineffective to annul the requirements of Ins. L. 3420(d). The Company cannot reserve the right to violate Ins. §3420(d), and to delay a disclaimer, since it does not have that right to begin with. This is well explained by my colleague, esteemed defense counsel Dan Kohane, at his website: <https://www.hurwitzfine.com/news/coverage-pointers-volume-xx-no-11-se>

Further, we are working to obtain a further declaration of Steven R. Payne, counsel for Mr. Salazar, who will attest from his own personal knowledge as a witness to Mr. Salazar’s depositions and all litigation in the underlying that the scaffolding from which Mr. Salazar fell

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was not being used for installation of EIFS, rather, it was being dismantled, as stated at pages 85-86 of the deposition of Mr. Salazar in the underlying matter.

Finally, we intend to present the declaration of our client showing that the existence of a contract remains an issue in dispute in the underlying matter.

We would appreciate until midnight tonight to submit the papers.

We thank the Court for its indulgence and attention to this matter.

Respectfully,



James M. Haddad

cc: Cliff I. Bass
Frank Valverde

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Application granted. Plaintiff shall file its opposition today.

Defendants' application to file a short reply (Dkt. 137) is also granted. Any such reply shall be filed by May 13, 2022.

SO ORDERED.



Hon. Ronnie Abrams

05/06/22